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SIPDIS

STATE FOR EAP/RSP/TC AND EB/TPP/IPE, STATE PASS AIT/W AND
USTR, USTR FOR WINTERS AND WINELAND, USDOC FOR
4431/ITA/MAC/OPB/TAIWAN/MBMORGAN

E.O. 12958: N/A

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SUBJECT: P2P OPERATOR KURO FOUND GUILTY IN TAIPEI COURT

REF: TAIPEI 2909

1. On September 9, Taipei District Court found Peer to Peer (P2P) website operator Kuro guilty of enabling users to violate Taiwan's copyright law. Almost two years after Taiwan prosecutors filed a criminal case based on complaints from the International Federation of Phonographic Industries (IFPI), the Court sentenced Kuro President Chen Shou-teng to two years in prison and each of his two sons, Chen Guo-hsiung and Chen Guo-hua to three years in prison. The Court fined Kuro NT\$3 million (about US\$93,000). The Court also sentenced Chen Jia-huei, a Kuro user named in the complaint for downloading 900 songs, to four months. Chen Jia-huei's sentence can be commuted to a fine of NT\$300 per day (US\$9.24) and three years probation. Criminal sentences of up to six months can be commuted by paying the daily fine.

2. The Taipei District Court decision comes two months after the seemingly contradictory June decision of the Shilin District Court that P2P file sharing web site EZPeer was not guilty of copyright violation for allowing users to use its service to download and trade copyrighted materials. It also follows just days after an Australian court ruled that P2P pioneer Kazaa was liable for the copyright infringing activities of its members.

3. The decision, while not banning P2P software, cited Kuro's primary service as providing paying members with the ability to swap copyrighted materials as violating several provisions of Taiwan's copyright law. In differentiating between its decision and the decision of the Shilin court in the EZPeer case, the Taipei District Court noted that Kuro, in its advertisements and on its website, encouraged users to engage in illegal downloading of copyrighted materials.

4. Comment: This is a welcome decision from the Taipei District Court and, at first reading, appears to track with the recent US decision in the Grokster case which found that Grokster was liable for the copyright infringing actions of its members in part due to its promotion of copyright-violating activities. The Taiwan Intellectual Property Office (TIPO) and IFPI welcomed this decision, especially as both were disappointed with the judgment of the Shilin court in the EZPeer case. Kuro, meanwhile, has not yet issued a public statement but is virtually certain to appeal. End comment.
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